

ESTTA Tracking number: **ESTTA364104**Filing date: **08/19/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	NEKEN S.A.R.L.		
Entity	Corporation	Citizenship	France
Address	ZA de l'Eglantier F-49610 Murs-Erigne, F-49610 FRANCE		

Attorney information	Jeffrey H. Greger Lowe Hauptman Ham & Berner LLP 1700 Diagonal Rd Suite 300 Alexandria, VA 22314 UNITED STATES jhgreger@ipfirm.com Phone:703-684-1111
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Registration Subject to Cancellation

Registration No	3702678	Registration date	10/27/2009
Registrant	Nankang Rubber Tire Corporation, Ltd. Suite 608, 6F, No. 136, Sec.3, Jen Ai Rd. Taipei, TAIWAN		

Goods/Services Subject to Cancellation

Class 012. First Use: 2008/10/20 First Use In Commerce: 2009/03/05 All goods and services in the class are cancelled, namely: Tires; Inner tubes; Tires for automobiles; Inner tubes for pneumatic tires; Treads for retreading tires; Treads for vehicles, namely, rubber tracks for tracked vehicles; Tire casings, namely, spare tire holders and carriers; Tires with non-skid devices for vehicle wheels, namely, vehicle tires featuring chains or spikes; Tire repair patches; Mud flaps for vehicles; Treads for retreading tires and treads in the nature of rubber tracks for tracked vehicles; Tires for motorcycles
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	NK SPORT Cancellation.pdf (9 pages)(238399 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jhg/
Name	Jeffrey H. Greger
Date	08/19/2010

Cancellation Petition

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Registration No. **3,702,678**

Mark: NK SPORT

Registration Date: October 27, 2009

NEKEN S.A.R.L.

Petitioner,

v.

NANKANG RUBBER TIRE CORP.

Registrant

Cancellation No.: _____

PETITION TO CANCEL REGISTRATION

COMES NOW Petitioner, NEKEN S.A.R.L. an entity organized under the laws of France, with an address of ZA de l'Eglantier F-49610 Murs-Erigne, France, believing that he is being damaged by Registration No. 3,702,678, hereby petitions to cancel same on the following grounds.

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Facts Common to All Counts

1. Petitioner is the owner of a pending U.S. application under serial number 79/061,748 seeking coverage for the mark NK NEKEN.

2. Serial Number 79/061,748 covers the following list of goods and services:

Apparatus for locomotion by land air or water, namely, vehicles, namely, cars, boats, airplanes, motorcycles, bicycles, tricycles, side-cars; vehicle parts, namely, motors, engines, suspension shock absorbers, bodies for vehicles, anti-skid chains, chassis, bumpers, sun-blinds adapted for automobiles, and safety belts; electric vehicles, namely, cars, motorcycles, and bicycles; mopeds; motorcycles and bicycles parts and accessories, namely, frames, stands, brakes, handlebars, rims, pedals, wheels and saddles, excluding tires; and

Demonstration of goods, organization of exhibitions and events for commercial or advertising purposes, dissemination of advertising material, namely, leaflets, prospectuses, printed matter, and samples in the field of motorcycles and bicycles accessories, excluding tires; and

Entertainment in the nature of car shows, bicycles and motorcycle shows, car racing, motorcycle and bicycle racing; sports and cultural activities, namely, organizing community sporting and cultural events; sport camp services, rental of sports

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equipment except in vehicles, organization of sport competitions and exhibitions for cultural or educational purposes

The Petitioner's application number 79/061748 is hereinafter referred to as "the '748 application."

3. The '748 application was filed with the USPTO on October 16, 2008 based under Section 66 of Lanham Act under the Madrid Protocol.

4. Registration Number 3,702,678 covers the mark "NK SPORT" and coverage is listed as follows:

Tires; Inner tubes; Tires for automobiles; Inner tubes for pneumatic tires; Treads for retreading tires; Treads for vehicles, namely, rubber tracks for tracked vehicles; Tire casings, namely, spare tire holders and carriers; Tires with non-skid devices for vehicle wheels, namely, vehicle tires featuring chains or spikes; Tire repair patches; Mud flaps for vehicles; Treads for retreading tires and treads in the nature of rubber tracks for tracked vehicles; Tires for motorcycles all in Class 12 (hereinafter Registration No. 3702678 is also referred to as the '678 registration).

5. The Examining Trademark Attorney managing the prosecution of the '748 application on behalf of the USPTO has cited the '678 registration as a substantive bar to the '748 application on the basis of a likelihood of confusion in view of the expansive

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coverage for tires including motorcycle tires and accessories for tires and also due to perceived similarity between the acronym NK in the respective marks.

6. The owner of the '678 registration filed a Statement of Use signed by the Chief Executive Officer (CEO) Mr. Chin-Ming HSIEH on April 22, 2009 asserting the Registrant's NK SPORT mark was in use on or in connection with all goods or services listed in the application including all the goods listed in paragraph four above.
7. Registrant has filed statements of use in support of numerous applications covering the identical list of goods as appears in paragraph four above, including but not limited to application number 77476319 for the mark NK VAN which matured into Registration No. 3644708, and application 77476335 for the mark NK 4X4WD which matured into Registration 3644709.
8. The mark NK VAN as appears in the '708 registration is alleged to be used for tires for motorcycles.
9. The mark NK 4X4WD as appears in the '709 registration is allegedly used for tires for motorcycles. Motorcycles do not have four wheels and are not considered four by four vehicles.
10. The mark NK SPORT as appears in the '678 registration challenged by this Petition is alleged to be used for tires for motorcycles.
11. The Registrant Nankang Rubber Corp. has a USA division with internet web promotions touting the availability of passenger car tires, high-performance automobile tires, and SUV, light truck and crossover vehicle tires but no motorcycle tires.

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12. Nankang does not use the NK SPORT mark on use motorcycle tires in the United States as declared by the CEO of Nankang during prosecution of the application which matured into the '678 registration.
13. Nankang does not use the NK VAN mark on motorcycle tires in the United States as declared by the CEO of Nankang during prosecution of the application which matured into the '708 registration..
14. Nankang does use the NK 4X4WD mark on motorcycle tires in the United States as declared by the CEO of Nankang during prosecution of the application which matured into the '709 registration.
15. Nankang does use the marks NK SPORT, NK VAN, or NK4X4WD on all of the goods listed in the respective trademark registrations, including but not limited to motorcycle tires, tire repair patches and mud flaps, notwithstanding Registrant uses its respective marks for tires for automobiles.
16. All the goods as listed in use in '678 registration in United States commerce after investigation cannot be located as actually in use in the United States despite use for automobile tires.
17. The existence of the '678 registration on the Principal Register of the USPTO provides the registrant prima facia exclusive rights to use the mark NK SPORT on all the goods listed in the '678 registration and thereby prevent use of confusingly similar marks by third parties.
18. If the Examining Trademark Attorney is correct in concluding that a likelihood of confusion exists between the marks NK NEKEN as applied-for in the '748 application based on the coverage of goods and services as listed in paragraph four and the mark

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NK SPORT as appears in the '678 registration, Applicant will be harmed by the continued existence of the '678 registration and its validity to the extent the existence of the '678 registration in its current form stands as substantive bar to the '748 application and Applicant is currently harmed by the continued maintenance of the '678 registration on the Trademark Register therefore.

COUNT ONE – FRAUD AGAINST THE PATENT AND TRADEMARK OFFICE

19. All prior allegations are incorporated by reference.
20. When the CEO for the Registrant signed the declaration in support of the allegation of use on April 22, 2010 and filed same with the USPTO in support of the application for the '678 registration, the CEO for the Registrant knew the mark NK SPORT was not used on all the goods listed in the application but nevertheless signed the declaration and intended to deceive the USPTO in order that it rely on the declaration.
21. The declaration signed by the CEO of the registrant in support of the '678 registration was false.
22. The CEO of the registrant signed the declaration in support of the '678 registration intentionally to deceive the Trademark Office Examining Attorney reviewing the declaration and the application which matured into the '678 registration.
23. The CEO of the registrant who signed the declaration of use alleging use of the NK SPORT mark in the United States on all the goods listed in the application which matured into the '678 registration exhibited a reckless disregard for the truth when

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declaring falsely that the mark was in use on all the goods when in fact the NK SPORT was not in use on or connection with all the goods as listed in the application.

24. Without the false declaration as submitted during prosecution, the USPTO would not have matured the '678 registration with the broad coverage of goods as contained therein and therefore the false declaration was material in obtaining the '678 registration.

25. By virtue of the acts alleged herein the Registrant procured the '678 registration by virtue of fraud against the USPTO.

Wherefore, Petitioner believes that it will be damaged by the continued existence and the perceived validity of Registration No. 3702678 and prays that this Petition for Cancellation be sustained in favor of the Petitioner; that judgment be entered against the Registrant; and that the U.S Trademark Registration No. 3702678 be canceled.

Petitioner submits the applicable filing fee of \$300.00 with this Petition.

Respectfully submitted,
LOWE HAUPTMAN HAM & BERNER, LLP

A handwritten signature in black ink, appearing to read "Jeffrey H. Greger", with a stylized flourish at the end.

Jeffrey H. Greger
Attorney for Petitioner

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1700 Diagonal Road, Suite 310
Alexandria, Virginia 22314
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August 19, 2010

Certificate of Service

I hereby certify that a copy of the foregoing PETITION TO CANCEL has been forwarded to Registrant's currently listed correspondence address and contact information according to the current records as contained in the U.S. Patent and Trademark Office records as appears below, by prepaid United States mail this 19th day of August 2010.

Chun-Ming Shih
P.O. Box 220746
Chantilly, VA 20153

Dated: _____

8/19/10

Jeffrey H. Greger